

Brendan Sherman

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JFS HOLDINGS, INC.,)
Plaintiff,)
v.) Civil Action No.
ABESSINIO PROPERTY MANAGEMENT,)
INC.,) 05-709*SLR
Defendant.)

Deposition of BRENDA SHERMAN taken pursuant to
notice before Renee A. Meyers, Registered Professional
Reporter and Notary Public, in the law offices of The
Matlusky Firm, LLC, 1423 North Harrison Street,
Wilmington, Delaware, on Tuesday, May 30, 2006, beginning
at approximately 10:42 a.m., there being present:

APPEARANCES:

THE MATLUSKY FIRM, LLC
DAVID E. MATLUSKY, ESQ.
TARA M. DIROCCO, ESQ.
1423 North Harrison Street
Wilmington, Delaware 19806
for Defendant

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2 (Pages 2 to 5)

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1 BRENDAH SHERMAN,
2 the witness herein, having first been
3 duly sworn on oath, was examined and
4 testified as follows:

5 BY MR. MATLUSKY:

6 Q. Mr. Sherman, I am David Matlusky. I am the
7 attorney for Abessinio Property Management and
8 Dr. Abbesinio. This is Tara Dirocco. She is an
9 associate in the office.

10 Prior to getting into the actual
11 deposition, asking you questions, a few housekeeping
12 matters. I am just going to go through a litany of
13 reminders. I am going to ask you a few questions to find
14 out what you know about the facts. If you do not hear a
15 question, say so and I will repeat it. If you do not
16 understand a question, say so and I will rephrase it. If
17 you realize that an earlier answer was incomplete or
18 incorrect, just stop me and we will supplement the answer
19 and correct it. If you need to stop to use the rest room
20 or get a soda or a drink, just let me know and you are
21 permitted to do so.

22 If you do not know or remember
23 information, just say so. If you answer a question, I
24 will assume that you have heard it, understood it, and

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1 Biden & Balick.
2 BY MR. MATLUSKY:
3 Q. And Balick.
4 Do you acknowledge, at this point, you
5 are waiving the presence of local counsel?
6 A. Yes.
7 Q. And you desire to proceed with the deposition?
8 A. That's correct. Yes.
9 Q. The underlying business was a Laundromat; is
10 that correct?
11 A. That is correct.
12 Q. And it was for sale?
13 A. Yes.
14 Q. How did you advertise the business for sale?
15 A. The business was put up with a brokerage
16 company called the Ellsher Group. They advertise on a
17 website looking for buyers, describing the assets, and
18 waiting for buyers to contact the Ellsher Group.
19 Q. Who, exactly, is the Ellsher Group?
20 A. The Ellsher Group is a company that I founded
21 approximately three years ago. It's a business brokerage
22 firm specializing in the sale of Laundromats.
23 Q. Now, you say you founded that about three
24 years ago?

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1 have given the answer to the best of your recollection.
2 A reminder to answer all questions verbally, not to use
3 any hand motions or a nod of the head since we do have
4 the stenographer that is listening to answers as opposed
5 to watching for them.

6 Are you on any medication that may
7 affect your recollection or decisions today?

8 A. No.

9 Q. That's it. We can begin.

10 For the record, can you state your name?

11 A. Brendan Sherman.

12 Q. And how are you involved in this particular
13 lawsuit?

14 A. I am the president of JFS Holdings, which is
15 the plaintiff that filed the suit.

16 Q. And are you acting as JFS Holdings counsel or
17 attorney in this matter?

18 A. Correct, I am.

19 Q. For the record, I would also like to clarify
20 that local counsel that's been retained on behalf of JFS
21 Holdings, Inc., is the law firm of Bifferrato, Biden,
22 Gentilotti --

23 A. That's good enough.

24 MS. DIROCCO: Bifferrato, Gentilotti.

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1 A. That's correct.
2 Q. Are you the owner of the business?
3 A. It's a corporation. It's a Pennsylvania S
4 Corporation. I am an officer and a shareholder.
5 Q. Are you the sole shareholder of that entity?
6 A. Yes.
7 Q. And it is a Pennsylvania corporation?
8 A. Yes.
9 Q. JFS Holdings, Inc., are they the owners of the
10 Laundromat?
11 A. That's correct.
12 Q. And is JFS Holdings, Inc., is a Pennsylvania
13 corporation?
14 A. That's correct.
15 Q. And are you the sole shareholder of that?
16 A. No. My wife and I own the shares in that
17 entity as tenants by the entireties.
18 Q. And who manages that particular entity?
19 A. I do.
20 Q. Do you run the day-to-day operation?
21 A. No. We have, as of right now, we have -- JFS
22 employs three people who run the day-to-day operations.
23 Q. Where are they employed out of? What state?
24 A. They are employed at the stores in Delaware.

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3 (Pages 6 to 9)

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1	Q. All the stores are in Delaware?
2	A. Those two stores, yes.
3	Q. So, JFS Holdings, Inc., is made up of you and
4	your spouse; it's a Pennsylvania corporation; is that
5	correct?
6	A. That's correct.
7	Q. And their underlying assets are Laundromats?
8	A. That's correct.
9	Q. Do they have any other assets?
10	A. No.
11	Q. Do they manage any other assets?
12	A. No, JFS Holdings has two Laundromats, it's
13	sole assets. One is at 1952 Maryland Avenue in
14	Wilmington, Delaware. The second, obviously, is the
15	Basin Plaza Shopping Center, which is the subject of the
16	complaint.
17	Q. The subject of the complaint is the Asset
18	Purchase Agreement; is that correct?
19	A. That's the basis, yes.
20	Q. Who prepared that Asset Purchase Agreement?
21	A. I did.
22	Q. The subject matter is selling the Laundromat
23	to an individual?
24	A. That's not correct, sir.

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1	showing up, where was closing supposed to be?
2	A. To be held at the store, September 1st, at the
3	store.
4	Q. The Basin Road Shopping Center?
5	A. That's correct.
6	Q. Do you know if Summer State, LLC, was going to
7	have an attorney present at the closing?
8	A. I have absolutely no idea.
9	Q. Were you going to be present at the closing?
10	A. Sure.
11	Q. Personally?
12	A. Absolutely.
13	Q. Were you anticipating having any counsel
14	present at the closing to represent JFS Holdings, Inc.?
15	A. No. It's not necessary. This is a very
16	rudimentary sale. They are typically -- Laundromats are
17	traded at the premises at each location by the owner and
18	the buyer.
19	Q. So, you were just going to show up, sign some
20	paperwork, transfer the funds?
21	A. Well, if you read through the Asset Purchase
22	Agreement, the only thing that the owner would need to
23	provide at closing would be a bill of sale, and the
24	seller, in turn -- I am sorry, the owner -- the buyer, in

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1	Q. Please correct me.
2	A. It's being sold -- it was to be sold to, I
3	believe, Summer State, LLC.
4	Q. And who was the underlying principal of Summer
5	State, LLC?
6	A. I believe the principal's name was Roseann
7	Sestito.
8	Q. And when did you anticipate selling the
9	business to Summer State, LLC?
10	A. September 1st, '05.
11	Q. Prior to that, do you know if Summer State,
12	LLC was a valid LLC?
13	A. I know nothing about Summer State, LLC. I
14	don't know when it was formed. I believe that
15	Miss Sestito was the sole shareholder, at least that's
16	what she represented.
17	Q. So, as far as entering into an Asset Purchase
18	Agreement, did you do any due diligence to determine if
19	it was a valid LLC formed in the state of Delaware?
20	A. No, I couldn't care less. As long as she
21	wanted to put the business in the name of Summer State,
22	LLC and come to closing with the funds necessary to
23	purchase the business, it was of no consequence to us.
24	Q. Getting to the issue of coming to closing and

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1	turn, would come up with the balance of the funds that
2	would comprise the sale.
3	Q. "The balance" being what's left over after a
4	deposit and the difference being the purchase price?
5	A. That's correct.
6	Q. And the purchase price being \$140,000?
7	A. That's correct.
8	Q. And Summer State, LLC or Miss Sestito provided
9	you a deposit at the signing of the Asset Purchase
10	Agreement?
11	A. That is correct.
12	Q. And was that deposit \$14,000?
13	A. That is correct.
14	Q. Do you recall who actually gave you that
15	deposit? Was it drawn on a personal checking account or
16	an entity account as in Summer State, LLC?
17	A. That, I do not recall.
18	Q. Did you deposit the check?
19	A. That was deposited in the Ellsher Group escrow
20	account to be held, obviously, pending closing.
21	Q. And was that deposit returned?
22	A. It was.
23	Q. When was it returned?
24	A. Sometime after the 1st of September when Miss

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4 (Pages 10 to 13)

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<p>1 Sestito issued a letter stating that she was no longer 2 willing to close since we did not get the landlord to 3 consent.</p> <p>4 Q. Did Miss Sestito inform you of any other 5 reason why she did not want to close?</p> <p>6 A. That was the basis of not closing.</p> <p>7 Q. The Ellsher Group, Inc., when Miss Sestito or 8 Summer State, LLC had dealings with purchasing this 9 underlying asset, being the Laundromat, was she aware 10 that the Ellsher Group was acting as an intermediary or 11 as a broker?</p> <p>12 A. Oh, absolutely.</p> <p>13 Q. And was she aware that JFS Holdings, Inc., 14 actually owned the asset?</p> <p>15 A. Of course she would because she would have 16 read the Asset Purchase Agreement, which was between JFS 17 Holdings and Summer State.</p> <p>18 Q. Was she aware at any time during your 19 negotiation, prior to executing the Asset Purchase 20 Agreement, that you were an owner, a stockholder, or 21 founder involved in both the JFS Holdings and Ellsher?</p> <p>22 A. She knew that I had a -- I had disclosed to 23 her that I had a personal interest in that Laundromat in 24 that I had a personal stake that I was a part owner in</p>	<p>1 Q. Of 2005?</p> <p>2 A. That's correct.</p> <p>3 Q. As to the solicitation or the business for 4 sale, who was the contact at the Ellsher Group, Inc., 5 for --</p> <p>6 A. That was me.</p> <p>7 Q. So, you were the contact person?</p> <p>8 A. That's correct.</p> <p>9 Q. So, she knew to contact you and you were 10 discussing all the logistics and the parameters of the 11 purchase?</p> <p>12 A. I explained to her how it worked. I explained 13 to her how the business worked. I explained to her what 14 would be needed in order to purchase the business. I 15 explained to her that an Asset Purchase Agreement would 16 need to be executed. She would call me from time to time 17 to talk about the best ways, you know, for her to own the 18 business, etcetera, in my opinion, and I tried to help 19 her where I could.</p> <p>20 Q. What documentation did you provide her for her 21 to do her due diligence to purchase the business?</p> <p>22 A. The owner would never provide any 23 documentation to do due diligence. It would be upon the 24 perspective purchaser to do their due diligence.</p>
Page 11	Page 13
<p>1 JFS.</p> <p>2 Q. When did you disclose that to her?</p> <p>3 A. Sometime right around when we signed the Asset 4 Purchase Agreement.</p> <p>5 Q. What was her reaction to that?</p> <p>6 A. There was no reaction. She knew at that time. 7 She was very concerned as to who was going to train her 8 to do repairs and how to work on this equipment, and I 9 told her that I would be doing it personally for the two 10 weeks, as we had agreed upon, post closing.</p> <p>11 Q. Did you advise her, inform her that you were 12 involved or had a personal stake verbally or was it in 13 writing?</p> <p>14 A. Verbally.</p> <p>15 Q. How long would you say your dealings or your 16 negotiations were prior to entering into the Asset 17 Purchase Agreement dated August 1st?</p> <p>18 A. A couple of weeks.</p> <p>19 Q. And do you know how she actually found the 20 business for sale? Was it through the web solicitation?</p> <p>21 A. That's correct.</p> <p>22 Q. And when was her first contact with you?</p> <p>23 A. Probably somewhere in the latter half of June 24 or early July.</p>	<p>1 Q. How about as far as determining the purchase 2 price, did you provide her any profit/loss statements, 3 balance sheets?</p> <p>4 A. I believe I gave her an income statement and 5 the utility bills.</p> <p>6 Q. Did she ask you for anything else?</p> <p>7 A. Not to my recollection, no.</p> <p>8 Q. So, you entered into an Asset Purchase 9 Agreement October 1st, 2005?</p> <p>10 A. That's correct.</p> <p>11 Q. Between October 1st --</p> <p>12 A. Wait a minute. That's not correct. What's 13 the date on that?</p> <p>14 Q. August 1st, 2005.</p> <p>15 A. You keep saying "October."</p> <p>16 Q. Excuse me --</p> <p>17 A. You just said "October," for the record, and 18 that's why -- I knew that wasn't correct.</p> <p>19 Q. Between August 1st and September 1st, what 20 dealings or documents were provided by Miss Sestito to 21 you?</p> <p>22 A. What documents were provided by Miss Sestito 23 to myself? I don't recall receiving anything from her 24 but for the deposit?</p>

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5 (Pages 14 to 17)

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1 Q. So just a check?
 2 A. Yeah. Once the deposit comes in, in this
 3 business, you know these people are for real. Typically,
 4 they either don't come up with the money and you know
 5 that they don't have the ability to close the
 6 transaction, or they come up with it and you schedule
 7 closing so you know in such a short time after you
 8 receive the down payment that you are not wasting any
 9 time.
 10 Q. How did you know she had financing or was
 11 going to come up with the deposit?
 12 A. She told me.
 13 Q. So you were moving along for a September 1st
 14 settlement date?
 15 A. Sure.
 16 Q. Part of the Asset Purchase Agreement,
 17 specifically on page 5, paragraph 13, here is a paragraph
 18 that's captioned "Contingencies." Are you aware of that
 19 particular paragraph?
 20 A. I will tell you what, it would be really good
 21 if you could provide me a copy of that and we could both
 22 look off it together so I am not sort of guessing as to
 23 what you are looking at because I haven't reviewed that
 24 document in a year. Do you have a copy for me to look

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1 you were involved in attempting to sell the asset?
 2 A. The latter half of August.
 3 Q. Would you say after August 15th?
 4 A. I'd be guessing, but that sounds about right.
 5 Q. But sometime after August 15 and obviously
 6 before the tentative closing date?
 7 A. Yeah. I think if you look at our answers to
 8 your interrogatories, there is a date on correspondence
 9 which makes up and comprises the exhibits to the
 10 complaint, and I think that there was a date that we were
 11 able to back into which was sometime between August 15th,
 12 if memory serves, and August 21st, or something like
 13 that.
 14 Q. So, at the open end of the envelope, the
 15 landlord had about two weeks' notice?
 16 A. Yes.
 17 Q. Of the tentative closing date?
 18 A. I think that's correct.
 19 Q. And you provided a copy of an application
 20 which was filled out and prepared by Miss Sestito?
 21 A. No. Your client provided it to me. I then
 22 forwarded it to Miss Sestito, who filled it out, and I
 23 forwarded it back to your client.
 24 Q. And that was done after the August 15, 2005,

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1 at?
 2 Q. Yes. For the record, I am going to provide
 3 Mr. Sherman a copy of the Asset Purchase Agreement.
 4 A. Thank you.
 5 Q. Which also, for the record, this was the same
 6 Asset Purchase Agreement which was attached to the
 7 initial complaint.
 8 A. That's correct. Okay. Your question, sir?
 9 Q. Paragraph 13, "Contingencies," specifically A,
 10 can you just read that for the record?
 11 A. "The seller's assignment of the Real Estate
 12 lease for the business to the purchaser without any
 13 modifications in the term of the lease whatsoever".
 14 Q. Did you prepare an assignment of the lease for
 15 Miss Sestito or her underlying entity, Summer State, LLC?
 16 A. No. We never got that far.
 17 Q. Why didn't you?
 18 A. Because your client refused to give his
 19 consent to the assignment so we weren't going to waste
 20 our time in drafting an assignment for a lease that he
 21 refused to sign.
 22 Q. So, settlement date was scheduled for
 23 September 1st. When did my client, Abessinio Property
 24 Management, Inc., or Dr. Abessinio, receive notice that

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1 and before closing?
 2 A. What had happened was I personally contacted
 3 your client.
 4 Q. Do you remember when you contacted him?
 5 A. Within the time frame we are talking about. I
 6 advised him of the fact that there is a pending sale,
 7 which, obviously, would be contingent upon receiving his
 8 consent to an assignment of the lease. He, in turn, said
 9 that he would be providing -- things that he would
 10 require or he would need to have an application filled
 11 out. He asked me for my fax number. I provided it to
 12 him. And he provided me that application that afternoon,
 13 which I, in turn, faxed over to Miss Sestito.
 14 Q. Did the landlord request a copy of your
 15 underlying Asset Purchase Agreement or any other
 16 financials which were provided as part of the Asset
 17 Purchase Agreement?
 18 A. No. The application that we are referring to,
 19 unfortunately, it's not part of the record here, but that
 20 application was what your client wanted, apparently, and
 21 the basis of having that application was for him to run a
 22 credit check on Miss Sestito.
 23 Q. Do you know if a credit check was actually
 24 ran?

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6 (Pages 18 to 21)

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1 A. It was. Do you have a copy we can take a look
 2 at?

3 Q. No.

4 A. Because your client has advised me that it
 5 came back stellar.

6 Q. As to the paragraph 13, contingency A, it
 7 doesn't mention anywhere in there that the landlord shall
 8 approve an assignment. It just says that the seller
 9 shall assign his lease.

10 A. No. Let's be very clear so that we clear up
 11 the record. Let me read 13 A in its entirety. "Seller
 12 and purchaser's obligations to proceed to settlement
 13 hereunder is contingent upon the following: The seller's
 14 assignment of the Real Estate lease for the business to
 15 the purchaser without any modifications in the terms of
 16 the lease whatsoever."

17 Q. That's correct. That paragraph calls for the
 18 responsibility of the seller assigning the Real Estate
 19 lease?

20 A. No. That paragraph puts the onus on the
 21 seller to get the landlord to assign the lease to the
 22 purchaser.

23 Q. So --

24 A. That is a standard clause -- by the way, just

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1 A. That's correct.

2 Q. Part of the agreement of sale, which I had
 3 forwarded over to you, are also --

4 A. Can I just clear up the record?

5 Q. Sure.

6 A. Are you referring to the Asset Purchase
 7 Agreement as the agreement of sale?

8 Q. Asset Purchase Agreement is also the agreement
 9 of sale or the contract.

10 A. That's correct.

11 Q. Are you familiar with -- and I can provide you
 12 a copy if you need your recollection refreshed -- a
 13 letter dated September 1st, 2005, from Roseann Sestito?

14 A. Here is what I am going to do: I am going to
 15 request that you provide me a copy of every document for
 16 which you are referring to so that I can look at it, tell
 17 you if I recognize it, and answer questions about it.
 18 Would that be fair?

19 Q. That's perfectly fair. For the record, this
 20 was a document which was not provided by the plaintiff
 21 pursuant to a request for discovery.

22 (Discussion off the record.)

23 BY MR. MATILUSKY:

24 Q. Mr. Sherman, I just presented to you a

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1 so you know, this Asset Purchase Agreement was not custom
 2 made for this sale. It is used in every laundry sale
 3 that the Ellsher Group does.

4 Q. So, this particular contingency, your reading
 5 of it is that the seller's assignment of the Real Estate
 6 for the lease for the business to purchase without any
 7 modification of the terms of the lease whatsoever, is
 8 also contingent on the landlord approving the particular
 9 assignment?

10 A. It has nothing to do with the seller assigning
 11 the lease because, obviously, the seller can't assign a
 12 lease without the landlord. This paragraph clearly means
 13 that the seller's obligation is to get the landlord to
 14 agree to the assignment of the lease to the purchaser.

15 Q. So, it's your position that an assignment
 16 cannot be unilaterally given by a seller to a purchaser
 17 independent of the landlord?

18 A. Without the landlord's consent. I made that
 19 very clear to Miss Sestito up front. You will see all
 20 the correspondence is consistent with getting the
 21 landlord's consent. That's what this whole thing has
 22 been about.

23 Q. And it's your position, but for the landlord
 24 's consent, closing would have taken place?

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1 document which is labeled as Defendant's Exhibit 1. It's
 2 a fax to Brendan Sherman/Ellsher Group, Inc.

3 Do you have that in front of you?

4 A. I do. Okay. I have read it.

5 Q. Have you ever seen this document before?

6 A. I don't have any recollection of it and I do
 7 not possess it. I am not saying that I didn't receive
 8 it, but I know, for instance, that the date of this is
 9 September 1st, '05, and I believe that if you look at
 10 Exhibit G to the complaint, Miss Sestito and I were still
 11 working towards a closing past that date.

12 Q. Okay.

13 A. So what I am saying to you is: It may have
 14 been provided, but, clearly, based on what is, off the
 15 top of my head, Exhibit G to the complaint, this was
 16 superseded by that because that clearly acknowledges that
 17 we -- I think what may have happened is she was sending
 18 this to me to cover herself on 9/1/05, since settlement
 19 didn't occur as of that date.

20 Q. So, as far as the comments on the fax, which
 21 is dated 9/1/05, Defendant's Exhibit 1 --

22 A. Right.

23 Q. -- she goes on, and this is Miss Sestito,
 24 Roseann Sestito, she addressed it Brendan. The second

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7 (Pages 22 to 25)

Page 22	Page 24
1 paragraph of that particular fax, it says, "I wanted to 2 have an inspector come out to look at the business before 3 settlement date and since the settlement date is today, 4 there is no way an inspector can review it ahead of time. 5 Please send me the down payment of \$14,000 less the \$40 6 fee you paid. Thank you. Roseann Sestito." 7 Is that an accurate reading of the 8 paragraph two? 9 A. That's correct. 10 Q. And the remainder of the fax? 11 A. I forgot, we paid your client \$40 to have them 12 run that credit check. I forgot about that, and you 13 don't have a copy of the credit report that we paid for, 14 sir? 15 Q. I don't have a copy physically in my 16 possession, not to say that there is not a copy of a 17 credit report? 18 A. You haven't seen it? 19 Q. I don't have a copy and I believe my client is 20 in the process of trying to find it or is providing a 21 copy. 22 A. I request, for the record, a copy of that 23 credit report when you -- 24 Q. Just by way of clarification, Federal Rules,	1 Q. Did you offer any extension or an addendum to 2 the Asset Purchase Agreement or the contract to extend 3 settlement a week or two until maybe a clarification or 4 an assignment, the issue could be resolved? 5 A. I, obviously, told her that I was still 6 working towards it, but by this point, by September 2nd, 7 2005, your client had made it very clear that he was 8 refusing to provide his consent, and I advised 9 Miss Sestito of that. 10 I didn't see any other way around it at 11 that point. I said that -- I told her at that point that 12 I understood if she wanted her money back, and she said 13 she did. I asked her for this letter, she provided it to 14 me, and we gave her her money back. 15 Q. During that time, prior to September 2nd, 16 2005, did you inform Miss Sestito that you were planning 17 on filing a claim against Abessinio, the landlord? 18 A. I said that may be an avenue which we need to 19 go down in order to try to get his consent. 20 BY MS. DIROCCO: 21 Q. I have a question. Why, if the September 1st 22 letter mentions the -- the reason that she doesn't want 23 to go through with everything was because of the 24 inspection, do you know why it was necessary for her to
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1 as far as requests for particular documents or items 2 which should be provided into evidence shall be requested 3 by way of request for production, just by way of 4 clarification. 5 Now, September 2nd, 2005, you received a 6 letter that you previously, about two or three minutes 7 ago, mentioned that you thought it was Exhibit G. 8 A. Thank you. 9 Q. Coupled with the complaint, and you are 10 correct, that is, in fact, Exhibit G, which is also 11 labeled as Defendant's Exhibit 2, which will be made part 12 of this transcript. 13 Can you just reacquaint yourself with 14 that particular letter? 15 A. I am. 16 Q. The crux of that letter, with your reading, is 17 what? 18 A. We could not get the assignment of the Real 19 Estate, and, therefore, she did not want to extend 20 closing any further and she wanted her money back and she 21 was going to either look for another business to 22 purchase, but either way, realized that she couldn't go 23 through the closing because we couldn't get the 24 assignment.	1 send a letter on September 2nd, stating a different 2 reason? 3 A. Well, ma'am, you have got to look at it this 4 way: If you go back to paragraph 13 C of the Asset 5 Purchase Agreement, that says, "The purchaser performing 6 (within a reasonable time prior to settlement) a physical 7 inspection of the business and receiving a satisfactory 8 report from its agents regarding its condition." 9 She coming to me saying, on September 10 1st, that she had an inspector who she wanted to look at 11 the property as of the date of closing, was not within a 12 reasonable time, she had a month to do so, and that would 13 not have been able to get her money back. We worked 14 beyond the closing on September 1st because we were both 15 waiting for the landlord to give his consent. 16 As you can see, the letters that I am 17 sending to your client work right up to the date of 18 closing, every day, asking, Can't you give your consent? 19 Here is what she is willing to do? Miss Sestito upped 20 her offer each and every day going up to closing. It 21 started with an assignment of a lease. What 22 It ended with was Miss Sestito giving a 23 personal guarantee, the Summer State Corporation being 24 the -- being on the lease, being on the hook, if you

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8 (Pages 26 to 29)

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1 will, with her personal guarantee behind it, and as a
 2 last ditch effort, Miss Sestito offered, I think it was
 3 up to three-month's rent prepaid so that your client felt
 4 comfortable with the new tenant. That was dismissed out
 5 of hand by your client.

6 Q. But to answer my question: Do you know why
 7 she sent the second letter?

8 A. It was at my request.

9 Q. You requested that -- did you request that she
 10 include the specific language about the assignment?

11 A. Absolutely not.

12 Q. So what did you request of her?

13 A. I asked her for a letter setting forth why she
 14 did not want to proceed with the transaction. She
 15 provided it to me. This was sufficient. I called her, I
 16 said, Roseann, I received the letter; thank you very
 17 much; I will be cutting the check tomorrow; you will get
 18 it in the mail within two days.

19 Q. So, to be clear, the September 1st fax letter
 20 was not sufficient; according to you, the September 2nd
 21 letter was sufficient?

22 A. I don't have any recollection of receiving the
 23 September 1st fax transmission, but, clearly, she and I
 24 were working post September 1st to try to close this. I

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1 assignment, and assuming the -- this inspection was
 2 fine --

3 A. This is a cursory assignment, walk through --
 4 it's a walk through type thing.

5 Q. Your position is she would have proceeded to
 6 closing?

7 A. Absolutely. She had given us the \$14,000.

8 She was very serious about closing. She was very excited
 9 about the September 1st closing. We worked very hard to
 10 still close on September 1st.

11 Q. Did Miss Sestito raise a concern to you
 12 approaching closing that she was not aware of the fact
 13 that you were affiliated or a member or had some kind of
 14 interest in both the underlying asset and acting as the
 15 intermediary, Ellsher (sic) Group?

16 A. Ellsher Group, that's E-l-s-h-e-r, G-r-o-u-p.

17 Q. Ellsher Group?

18 A. Not at all. In fact, she thanked me
 19 continuously. She knew that I was going to be personally
 20 providing two weeks of training, so there could be no
 21 surprise, leading up to September 1st, that I had a
 22 personal interest in the ownership of that business in
 23 that how would someone who did not have an ownership
 24 interest or an employment interest, let's say, with JFS,

Page 27

1 think my letters to your client go up to the date, I
 2 don't recall exactly when they go up to, still pleading
 3 for the assignment, and that wasn't given.

4 BY MR. MATLUSKY:

5 Q. So, it's your position, but for the
 6 assignment, Miss Sestito or Sumner State, LLC would have
 7 purchased this Laundromat?

8 A. Here is what we did: She wanted to have an
 9 inspector come in there, and we had no problem with that.
 10 She scheduled that at least three or four times. And
 11 every time she would call me and say, Has the landlord
 12 given his consent because I don't want to go to the cost
 13 of paying for an inspector if I know that this can't
 14 happen because we can't proceed without the lease, and
 15 she did that up to closing. And we wanted to work with
 16 her.

17 We said, Look, if you -- if we get the
 18 consent from the landlord tomorrow, schedule the guy for
 19 the next day, and she scheduled him at least three or
 20 four times and cancelled him and called us and cancelled,
 21 saying, I want you to know I cancelled this gentleman
 22 from coming out since we couldn't get an assignment from
 23 the landlord.

24 Q. So, is it your position that but for the

Page 29

1 do two weeks of hard training on the machines with her?

2 Q. I suppose that could be possible without
 3 someone having an ownership interest; however --

4 A. I guess the question would be why would they
 5 do that?

6 Q. That's a question for that individual person.
 7 But I suppose it could be done.

8 Did you inform her of your interest or
 9 did she find out --

10 A. I have asked and answered this. I have told
 11 you repeatedly that I told her, somewhere around the time
 12 of signing the Asset Purchase Agreement, that I had a
 13 personal interest in the laundry and that I would be
 14 providing the training personally for her for the two
 15 weeks per the agreement post closing. I hope I am not
 16 going too fast.

17 Q. Pursuant to the Asset Purchase Agreement and
 18 Dr. Abbesinio's letters and correspondence between you
 19 and him requesting the assignment, were the other issues
 20 addressed? Did you provide Miss Sestito a copy of the
 21 lease?

22 A. Yes.

23 Q. And did you provide her a copy of the CAM
 24 charges, the common area maintenance charges?

Brendan Sherman

9 (Pages 30 to 33)

Page 30

1 A. There are no common area maintenance charges.
2 But if you are asking: Did I provide her with the
3 quarterly payments designating our share, 'our' being
4 JFS' share of the strip center's insurance, sewage, and
5 taxes, yes. Everything that was an obligation to provide
6 to her in the Asset Purchase Agreement was provided to
7 her. Everything that she needed, she received.

8 Q. Why did JFS Holdings, Inc., refuse to sign a
9 guarantee for one year?

10 A. Well, this is the first time you guys aren't
11 calling it a personal guarantee. I guess you have
12 figured out that the personal guarantee can't be signed
13 by a corporation.

14 Q. We can phrase it a personal guarantee.
15 Whether it's personal to the corporation -- it could be
16 splitting of terms or splitting of hairs.

17 A. Quite frankly, no, it's not a splitting of
18 hairs and I wanted to make sure that that was on there.
19 The interrogatories requested why didn't JFS Holdings, as
20 a corporate entity, provide a personal guarantee? As I
21 am sure, hopefully, you are aware, a corporation is its
22 own legal entity and cannot provide a personal guarantee.
23 That can only be done by an individual. So I just want
24 to clear up the record as to what you are asking.

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1 Q. The definitions and instructions pursuant to
2 defendant's first set of interrogatories directed to
3 plaintiffs, under the "Definition" paragraph, it
4 specifically calls for the terms you, your, or yours
5 refers to plaintiff.

6 A. Which is JFS Holdings, Inc.

7 MS. DIROCCO: And any plaintiff's
8 agents, employers, service, workmen, other
9 representatives acting on plaintiff's behalf. So that
10 would include a personal guarantee.

11 THE WITNESS: No, it wouldn't, because
12 you would have to, in that interrogatory, direct the
13 exact person that you are asking for -- but let's move
14 off this because I don't have time to deal with this.

15 If you are asking why JFS Holdings would
16 not provide a guarantee, because it would no longer own
17 the business. It would have no control. It wouldn't
18 have the keys to the business. If anything went wrong,
19 JFS couldn't do anything to minimize its loss. JFS
20 couldn't enter the business. That, in partial part, off
21 the top of my head, is one of the reasons why JFS
22 wouldn't do that.

23 Secondly, JFS would not provide a
24 personal guarantee or, I am sorry, I apologize, a

Page 32

1 guarantee since the landlord had a new tenant that was
2 providing not only the assets unencumbered in Summer
3 State, but also a personal guarantee and a few months
4 prepaid rent. So he had a suitable tenant and did not
5 need additional security.

6 BY MR. MATLUSKY:

7 Q. So, you refused on behalf of JFS and/or
8 yourself?

9 A. No, just as of JFS. It had nothing to do with
10 me personal.

11 Q. Would you personally --

12 A. Absolutely not. Why would I -- does your
13 client --

14 Q. You have answered the question.

15 A. Does your client have a personal guarantee
16 right now? Does he have a personal guarantee right now?

17 Q. He has a lease with JFS Holdings, Inc., but
18 for sake of this particular assignment in question, if it
19 came up that you, personally, Brendan Sherman --

20 A. Absolutely not.

21 Q. -- you would not have signed a personal
22 guarantee?

23 A. Absolutely not.

24 Q. And also, based off what you just said,

Page 33

1 neither would corporate entity JFS Holdings, Inc.?

2 A. That's correct.

3 Q. Even knowing now that JFS Holdings, Inc., in
4 essence, lost the sale of the business for 150,000 --

5 A. 140,000.

6 Q. 140,000, excuse me, you would not give any
7 weight to signing a corporate guarantee, JFS, Inc.?

8 A. Can we go off the record for a minute?

9 Q. No. I'd prefer to stay on the record for
10 this.

11 A. We are touching on settlement discussions here
12 and I think they should be off the record. You are
13 touching on settlement discussions. You know better than
14 this. Go off the record and we will -- I will ask you
15 questions. We can then go back on the record and you can
16 put on there whatever you want.

17 Q. It's my position that we are not dealing with
18 settlement discussions, however, we will go off the
19 record.

20 (Discussion off the record.)

21 BY MR. MATLUSKY:

22 Q. Do you know if Miss Scitito ended up
23 purchasing a different business?

24 A. I have no idea. The last I spoke to her was

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Brendan Sherman

10 (Pages 34 to 37)

Page 34

1 the day I received a letter dated September 2nd, and I
 2 advised her, as I previously stated, that I received it
 3 and I would be cutting her a check the next day for the
 4 return of her money.

5 Q. You had no further verbal discussions?

6 A. After that -- whether it was the 3rd, the day
 7 after, that was my last discussion with her, telling her
 8 that I received the letter, apologized that this couldn't
 9 happen, and that she would get her money less the \$40 fee
 10 that was paid to your client within a couple of days.

11 And she did.

12 Q. Verbal or written discussions?

13 A. No. This was a -- to the best of my
 14 knowledge, recollection, etcetera, this was the last
 15 thing I received from Miss Sestito. Whether or not it
 16 was -- it's dated September 2nd. Quite frankly, I
 17 remember working with her almost through the 5th of
 18 September, but, you know, whenever I received this, it
 19 was sometime between the 2nd and the 5th, and that was
 20 when my conversation was.

21 Q. When you returned the deposit, the \$14,000
 22 security deposit, prepaid deposit --

23 A. Well, it's a down payment.

24 Q. Down payment, you returned that after you

Page 36

1 (Recess taken.)

2 MR. MATLUSKY: At this point, we have no
 3 further questions for the deposition and it's over.
 4 (The deposition was concluded at 11:38
 5 a.m.)

Page 35

1 received the September 2nd, 2005, letter?

2 A. Yeah. Because I said I want written
 3 confirmation that you are cancelling the sale.

4 Q. Would you have returned her deposit and
 5 cancelled the sale, knowing what went on, without written
 6 confirmation from Miss Sestito?

7 A. Well, no. I think that if you are going to
 8 pull out of the Asset Purchase Agreement, there needs to
 9 be a written acknowledgment of why you are terminating
 10 the agreement.

11 Q. She provided you a September 2nd, 2005, notice
 12 considering the agreement of sale or contract null and
 13 void. After that, did you, by way of any of the
 14 entities, provide a letter, correspondence, or release to
 15 her releasing her of any of her contractual rights, other
 16 than the return of the security deposit?

17 A. I don't recollect sending her anything but a
 18 check.

19 Q. Do you recall if there was a cover letter or
 20 anything associated with that return of the check?

21 A. There could have been. I don't recall. I
 22 don't have it. It's not in my records.

23 Q. I am going to take a recess for 30 seconds.

24 A. That's fine.

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1 INDEX TO TESTIMONY

2 BRENDAN SHERMAN

3 PAGE

4 Examination by Mr. Matlusky

5 2

6 INDEX TO EXHIBITS

7 PAGE

8 (There were no exhibits marked for identification.)

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Corbett & Wilcox

Brendan Sherman

11 (Page 38)

Page 38

1 CERTIFICATE

2 STATE OF DELAWARE:

3 NEW CASTLE COUNTY:

4 I, Renee A. Meyers, a Registered Professional
5 Reporter and Notary Public, within and for the County and
6 State aforesaid, do hereby certify that the foregoing
7 deposition of BRENDAN SHERMAN, was taken before me,
8 pursuant to notice, at the time and place indicated; that
9 said deponent was by me duly sworn to tell the truth, the
10 whole truth, and nothing but the truth; that the
11 testimony of said deponent was correctly recorded in
12 machine shorthand by me and thereafter transcribed under
13 my supervision with computer-aided transcription; that
14 the deposition is a true record of the testimony given by
15 the witness; and that I am neither of counsel nor kin to
16 any party in said action, nor interested in the outcome
17 thereof.

18 WITNESS my hand this 31st day of May A.D. 2006.

19

20

RENEE A. MEYERS
REGISTERED PROFESSIONAL REPORTER
CERTIFICATION NO. 106-RPR
(Expires January 31, 2008)

21

22

23

24

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Fax

To: Brendan Sherman/Ellsher Group, Inc. **From:** Roseann Sestito

Fax: 610-935-4851 **Pages:** 2

Phone: 610-935-4851 **Date:** 9/1/05

Re: Basin Plaza Laundry **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• **Comments:**

Brendan,

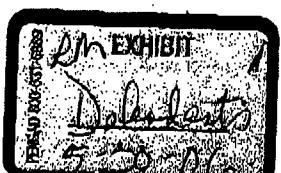
The Asset Purchase Agreement for the business located at 509 Basin Road, Basin Road Plaza, New Castle, DE 19720 (AKA Basin Plaza Laundry) will now be considered void as of Sept. 1 2005.

I wanted to have an inspector come out to look at the business before the settlement date and since the settlement date is today, there's no way an inspector can review it ahead of time.

Please send me the down payment of \$14,000 less the \$40 fee you paid.

Thank you,

Roseann Sestito



Roseann Sestito

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JFS HOLDINGS, INC.,)
Plaintiff,)
v.)
ABESSINIO PROPERTY MANAGEMENT,) Civil Action No.
INC.,) 05-709-SLR
Defendant.)

Deposition of ROSEANN A. SESTITO taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the law offices of The Matlusky Firm, LLC, 1423 North Harrison Street, Wilmington, Delaware, on Tuesday, May 30, 2006, beginning at approximately 9:10 a.m., there being present:

APPEARANCES:

THE MATLUSKY FIRM, LLC
DAVID E. MATLUSKY, ESQ.
TARA M. DIROCCO, ESQ.
1423 North Harrison Street
Wilmington, Delaware 19806
for Defendant

CORBETT & WILCOX
Registered Professional Reporters
1400 French Street Wilmington, DE 19801
(302) 571-0510
www.corbettreporting.com

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Roseann Sestito

2 (Pages 2 to 5)

Page 2

1 ROSEANN A. SESTITO,
 2 the witness herein, having first been
 3 duly sworn on oath, was examined and
 4 testified as follows:

5 BY MR. MATLUSKY:

6 Q. Good morning. I am David Matlusky and I am
 7 the attorney for Abessinio Property Management and
 8 Dr. Francis Abessinio, and with me this morning is my
 9 associate, Tara Dirocco. Before we start, I would just
 10 like to go through just a few logistical or housekeeping
 11 issues.

12 This is a deposition involving the case
 13 of JFS Holdings, Inc. Versus Abessinio Property
 14 Management, Inc. I am going to ask you a few questions
 15 to find out the facts giving rise to the underlying
 16 lawsuit.

17 If you do not hear a question, say so
 18 and I will repeat it. If you do not understand a
 19 question, say so and I will rephrase it. If you realize
 20 that an earlier answer that you gave was inaccurate or
 21 incomplete, just interrupt and say that you want to
 22 correct or supplement an earlier answer and you will be
 23 allowed to do so.

24 If you need to stop to use the rest

Page 4

1 for a business, and I came across a listing for a
 2 Laundromat in New Castle County for sale on
 3 Bisbuy/sell.com, which is where they buy and sell
 4 businesses, and his name appeared as the contact for that
 5 listing.

6 Q. Do you recall the name of a business that was
 7 advertising or was it just Brendan Sherman's name?

8 A. No. It was just his name.

9 Q. And what kind of business was it?

10 A. A Laundromat.

11 Q. And after you saw his name at that point, what
 12 did you do?

13 A. I called him up to ask about the business. It
 14 said that he was the broker, so I called him up, asked
 15 him about the business. He gave me some information. I
 16 had to sign a disclosure agreement, I guess that's
 17 normal, and he gave me the address and some information.

18 Q. Do you recall if that agreement was a
 19 confidentiality agreement?

20 A. Yes.

21 Q. When you were on the website, the internet,
 22 looking for businesses to buy, what businesses were you
 23 looking for? Were you looking for this particular type
 24 of business or just anything in general?

Page 3

1 room, get a cup of coffee or water, just let me know and
 2 you will be permitted to do so. If you do not know or do
 3 not remember information or know how to answer a
 4 question, just say so.

5 Are you on any medication right now that
 6 might impair your recollection?

7 A. No.

8 Q. Also, I am requesting that all questions be
 9 answered verbally. We have a stenographer here today and
 10 she won't be able to interpret non-verbal communications
 11 as to like a nod of the head, so if you can just
 12 verbalize all your answers.

13 A. Okay.

14 Q. And, also, for the record, the witness, can
 15 you state your name?

16 A. Roseann Sestito.

17 Q. Attorney David Matlusky and attorney Tara
 18 Dirocco are the only people present for this deposition.

19 Now we are going to move on to a few
 20 questions.

21 A. Okay.

22 Q. How do you know Brendan Sherman?

23 A. I was looking for a business to buy last year,
 24 I believe it was February, that's when I started looking

Page 5

1 A. I looked at a lot of different businesses and
 2 I did look for Laundromats because I did research them
 3 beforehand. I thought they would be a good business deal
 4 to get into.

5 Q. What other kinds of businesses did you
 6 actually pursue?

7 A. Let's see. A website business that sells baby
 8 merchandise. That's what I ended up buying in September.

9 Q. September of --

10 A. '05.

11 Q. Did you know Brendan Sherman at all prior to
 12 your investigation of this business?

13 A. No.

14 Q. When you were investigating this business and
 15 you signed this confidentiality agreement, what
 16 information were you provided by Brendan Sherman?

17 A. I was provided with the address to take a look
 18 at the place where it was located initially.

19 Q. And, again, you said what month was that --
 20 what month would you say that you signed that
 21 confidentiality agreement?

22 A. Let me check. I believe it was May 2005.

23 Q. Did you have any contact with an Ellsher
 24 Group, Inc.?

Roseann Sestito

3 (Pages 6 to 9)

Page 6

1 A. Yes.
 2 Q. What was your involvement with them?
 3 A. He represented -- Brendan Sherman represented
 4 the Ellsher Group as the broker.
 5 Q. Did you have any dealings with any particular
 6 individual at the Ellsher Group, Inc.?
 7 A. Only Brendan Sherman.
 8 Q. So, there was no one else that you spoke with
 9 as far as an individual that you can remember or had any
 10 correspondence?
 11 A. Nobody else.
 12 Q. But you were -- you do recall the name Ellsher
 13 Group, Inc.?
 14 A. Yes. His correspondence had that name on
 15 their paperwork.
 16 Q. And that was Brendan Sherman's correspondence?
 17 A. Yes.
 18 Q. Do you have any of that paperwork in your
 19 possession?
 20 A. Yes. I have the income statement with the
 21 Ellsher Group listed on there that he provided to me.
 22 Q. So, for all intents and purposes, all your
 23 dealings were with Brendan Sherman?
 24 A. Yes, sir.

Page 8

1 Q. Well, when you signed the Asset Purchase
 2 Agreement on August 1st, it was approximately an
 3 eight-page document?
 4 A. Yes.
 5 Q. Prior to signing that, was there a back and
 6 forth of the language of the -- or the content of the
 7 Asset Purchase Agreement to review that you had to mark
 8 up and send back to Brendan Sherman or --
 9 A. As far as the language, yes, I would say I
 10 wanted to know exactly what I was getting into, so -- and
 11 what my -- in case there was anything I guess I needed to
 12 do before any contingencies that had to occur.
 13 Q. Did you have an attorney at that point
 14 representing you in the purchase of the business?
 15 A. No.
 16 Q. Did an attorney, on your behalf, review the
 17 Asset Purchase Agreement?
 18 A. Yes, they did.
 19 Q. What was the name of that attorney?
 20 A. I don't know. It was a long time ago. I
 21 really don't remember.
 22 Q. Was it someone in Wilmington?
 23 A. Yes.
 24 Q. Do you know where they were located?

Page 7

1 Q. Were you aware of another entity called JFS
 2 Holdings, Inc.?
 3 A. Yes.
 4 Q. And what's your understanding of that company?
 5 A. I was told by Brendan Sherman that JFS
 6 Holdings were the actual owners of the Laundromat
 7 business.
 8 Q. So, you signed this confidentiality agreement
 9 in May of 2005. How long were you negotiating with
 10 Brendan Sherman as to the purchase of this business?
 11 A. Let's see. I had the signed agreement for the
 12 purchase in August 1, 2005.
 13 Q. So, you have an Asset Purchase Agreement dated
 14 August 1st, 2005?
 15 A. Yes.
 16 Q. Do you remember if that is the date that you
 17 actually executed that document or signed that agreement?
 18 A. Yes, it is.
 19 Q. Prior to signing that Asset Purchase
 20 Agreement, were there any other agreements that you had
 21 or draft agreements that went back and forth?
 22 A. I am trying to recall. I was provided with, I
 23 guess, the bills for the -- for a year. I don't know if
 24 that's what you mean.

Page 9

1 A. No.
 2 Q. Do you think you could find out the name of
 3 that particular individual in the next couple of weeks?
 4 A. No, I don't think so. It was one of those
 5 things where they had an ad in the paper, and it was for
 6 like \$50, you could get a consultation, so I had them
 7 look at it briefly.
 8 Q. Did you actually go to somebody's office?
 9 A. Yes.
 10 Q. Do you remember where the office was?
 11 A. I believe it was in Greenville somewhere. I
 12 am not sure. Sorry. But he just went over, you know,
 13 what I needed to do. I had my accountant look at it.
 14 Q. What's the name of your accountant -- the
 15 accountant that you use?
 16 A. His name is Dennis -- Dennis --
 17 Q. Do you know where he is located?
 18 A. Greenville. He is in my phone.
 19 Q. Just for the record --
 20 A. It just says "Dennis accountant" on it.
 21 Sorry.
 22 Q. Miss Sestito is checking the phone number.
 23 A. Dennis -- I am completely at a blank. I am
 24 sorry.

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Roseann Sestito

4 (Pages 10 to 13)

Page 10

1 Q. That's fine.
 2 A. I don't remember.
 3 Q. Do you think you could provide the name in the
 4 next week or so?
 5 A. Absolutely. Yes.
 6 Q. Thanks. How did the sales price of this
 7 Laundromat or this business come about or how was it
 8 determined?
 9 A. Well, when I first saw the listing, it must
 10 have been in February or March of 2005, it was listed for
 11 \$135,000. Brendan Sherman advised me that they, the
 12 people that were selling the business, wanted to hold
 13 onto it for a little bit. It was about two months later
 14 when either I contacted him or he contacted me, "The
 15 price," he said, "they increased it by 5,000 to 140,000."
 16 Q. And is that the price that you agreed to in
 17 the Asset Purchase Agreement?
 18 A. Yes. That's correct.
 19 Q. So, at what point did you decide to buy the
 20 business?
 21 A. At what point?
 22 Q. Prior to -- you signed the Asset Purchase
 23 Agreement --
 24 A. August.

Page 12

1 A. Yes, he did.
 2 Q. -- for this property? When were you
 3 anticipating actually to go to settlement or to close on
 4 the purchase?
 5 A. September 1st.
 6 Q. Of 2005?
 7 A. Of 2005.
 8 Q. As to the purchase price, how were you
 9 planning on financing that or paying for the business?
 10 A. I took out several loans. I took out home
 11 equity line of credit. I borrowed from credit cards. I
 12 took out a personal loan.
 13 Q. During what time frame did you do that?
 14 A. Before I signed the agreement to make sure I
 15 had enough money to pay for it.
 16 Q. So, it was before August 1st, 2005?
 17 A. That's correct.
 18 Q. And at that point, did you have the entire
 19 amount, 150,000?
 20 A. 140,000.
 21 Q. 140,000, excuse me.
 22 A. Yes, I did.
 23 Q. In the Asset Purchase Agreement, there is a
 24 reference to a deposit.

Page 11

1 Q. August 1st?
 2 A. Right.
 3 Q. So, prior to that, what -- at what point did
 4 you let Brendan know, Okay, I want to buy this place;
 5 let's sign the contract?
 6 A. I believe it was in July.
 7 Q. July of 2005?
 8 A. July 2005.
 9 Q. And then during -- between July and actually
 10 signing the contract, what were you doing as far as due
 11 diligence or reviewing --
 12 A. I was looking -- reviewing the bills that he
 13 sent me in order to calculate what the income would be
 14 per year on the -- I was basically trying to calculate
 15 what the -- his income statement had said.
 16 Q. What did he provide you with? An income
 17 statement?
 18 A. Yes.
 19 Q. What other documents do you recall that he
 20 provided you with?
 21 A. Water bill, electric bill, Verizon bill, waste
 22 management bill.
 23 Q. Did he provide you a copy of the lease, the
 24 underlying lease agreement --

Page 13

1 A. Yes, 14,000.
 2 Q. Did you provide that to Brendan Sherman?
 3 A. Yes, I did.
 4 Q. Do you have a copy of a cancelled check for
 5 that?
 6 A. I don't think I do.
 7 Q. Who did you make that check payable to?
 8 A. I believe it was JFS Holdings.
 9 Q. Do you recall if that check was cashed or was
 10 it just held?
 11 A. I am sorry. It was the Ellsher Group that I
 12 made the check out to.
 13 Q. You made the check payable to Ellsher Group?
 14 A. Right.
 15 Q. Do you know when that was dated, that
 16 particular check, roughly?
 17 A. August '05.
 18 Q. Do you know when in August? Was it given
 19 after the Asset Purchase Agreement was signed or with the
 20 Asset Purchase Agreement?
 21 A. It was given with the Asset Purchase
 22 Agreement.
 23 Q. And do you remember if that check was cashed?
 24 A. It was not cashed.

Roseann Sestito

5 (Pages 14 to 17)

Page 14		Page 16
1 Q. Was the check ever given back to you?	1 A. Yes.	1 A. Yes.
2 A. Yes, it was.	2 Q. Are you aware that there was a contingency	2 Q. Are you aware that there was a contingency
3 Q. Did you ever discuss financing the purchase	3 language in the contract, in the agreement of sale?	3 language in the contract, in the agreement of sale?
4 with a financing company or a bank?	4 A. Yes.	4 A. Yes.
5 A. I was advised by Brendan Sherman that because	5 Q. Do you know what page on the agreement of sale	5 Q. Do you know what page on the agreement of sale
6 the tax returns were not clear, that I wasn't able to get	6 the contingency language appeared?	6 the contingency language appeared?
7 bank financing.	7 A. Yes.	7 A. Yes.
8 Q. What year tax returns did he provide you with	8 Q. What page was that?	8 Q. What page was that?
9 for the business?	9 A. Page 5.	9 A. Page 5.
10 A. He did not provide me with any tax returns	10 Q. Would that be page 5, paragraph 13?	10 Q. Would that be page 5, paragraph 13?
11 because I was told that the people that owned the	11 A. Paragraph 13, yes.	11 A. Paragraph 13, yes.
12 Laundromat also had other Laundromats that they owned and	12 Q. In particular, would that be paragraph 13,	12 Q. In particular, would that be paragraph 13,
13 it would be very unclear as to what income came from this	13 section A?	13 section A?
14 particular Laundromat.	14 A. Yes.	14 A. Yes.
15 Q. Did the accountant that you used, did he raise	15 Q. At what point did Brendan Sherman advise the	15 Q. At what point did Brendan Sherman advise the
16 any questions as to requiring those particular tax	16 landlord of his intent or his representation or him	16 landlord of his intent or his representation or him
17 returns?	17 trying to sell this business to someone?	17 trying to sell this business to someone?
18 A. Yes, but it wasn't available, so I went with	18 A. As far as I know, it wasn't until the very	18 A. As far as I know, it wasn't until the very
19 the expenses that he gave me in order to calculate what	19 last minute.	19 last minute.
20 the income would be from the water use.	20 Q. What do you mean by "the very last minute"?	20 Q. What do you mean by "the very last minute"?
21 Q. How many years' worth of expenses did he	21 A. I would say in August.	21 A. I would say in August.
22 provide?	22 Q. Roughly the last week of August? The middle	22 Q. Roughly the last week of August? The middle
23 A. One full year.	23 of the month?	23 of the month?
24 Q. Was your accountant satisfied with any	24 A. I would say the third week in August.	24 A. I would say the third week in August.
Page 15		Page 17
1 documents that were provided by Brendan Sherman?	1 Q. Prior to Brendan Sherman advising the landlord	1 Q. Prior to Brendan Sherman advising the landlord
2 A. I would say not, but I was satisfied because I	2 of his intent to sell the business --	2 of his intent to sell the business --
3 researched how to calculate what the income would be from	3 A. I am sorry. Can I -- it's August 15th, middle	3 A. I am sorry. Can I -- it's August 15th, middle
4 the water bills.	4 August, not the third week.	4 August, not the third week.
5 Q. Did your accountant advise you one way or	5 Q. Middle of August is -- let's just discuss that	5 Q. Middle of August is -- let's just discuss that
6 another to proceed with the purchase based on the	6 for a second. Middle of August was when Brendan Sherman	6 for a second. Middle of August was when Brendan Sherman
7 financials or any of their representations or bills that	7 advised the landlord that he was trying to sell the	7 advised the landlord that he was trying to sell the
8 were provided?	8 business or --	8 business or --
9 A. No. I made the decision on my own, but it was	9 A. Yes.	9 A. Yes.
10 because I told them that I calculated what I did and it	10 Q. -- that he was representing the sale of the	10 Q. -- that he was representing the sale of the
11 came out to be what was told to me as far as what the	11 business?	11 business?
12 revenue would be.	12 A. Yes. I had to fill out a rental application	12 A. Yes. I had to fill out a rental application
13 Q. Did the seller or Brendan Sherman provide you	13 to purchase the Laundromat.	13 to purchase the Laundromat.
14 a copy of CAM charges, also known as common area	14 Q. Who did you receive that application from?	14 Q. Who did you receive that application from?
15 maintenance charges?	15 A. Brendan Sherman.	15 A. Brendan Sherman.
16 A. He advised me what they would be.	16 Q. Did Brendan Sherman explain what that	16 Q. Did Brendan Sherman explain what that
17 Q. Were you satisfied with the CAM charges and/or	17 application was for?	17 application was for?
18 the lease that he provided?	18 A. I received a letter that said what it was for.	18 A. I received a letter that said what it was for.
19 A. Yes.	19 Q. When was that letter dated?	19 Q. When was that letter dated?
20 Q. One of the contingencies in the Asset Purchase	20 A. August 15th. Excuse me. August 15th is when	20 A. August 15th. Excuse me. August 15th is when
21 Agreement involved the seller providing an assignment of	21 it was dated. I didn't receive it until August 31st.	21 it was dated. I didn't receive it until August 31st.
22 the lease to the purchaser.	22 Q. And who was that letter from?	22 Q. And who was that letter from?
23 Q. Are you aware of any issues involving	23 A. JFS Holdings.	23 A. JFS Holdings.
24 the assignment?	24 Q. And it was dated August 15th, 2005?	24 Q. And it was dated August 15th, 2005?

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6 (Pages 18 to 21)

Page 18

1 A. Yes.
 2 Q. And what did that particular letter reference?
 3 A. The rental application for the person
 4 attempting to purchase the Laundromat.
 5 Q. And who is that letter addressed to?
 6 A. It's addressed to Dr. Abbesinio.
 7 Q. And how did you end up getting a copy of that
 8 letter?
 9 A. Brendan had sent it to me, a copy of it.
 10 Q. Did you fill out that application?
 11 A. Yes, I did.
 12 Q. And what did you do with it?
 13 A. I had to fax it over to -- I believe it was
 14 Brendan.
 15 Q. When did you do that?
 16 A. It might have been Dr. Abbesinio. I am not
 17 really sure.
 18 Q. Do you recall when you actually faxed that or
 19 sent that to either Dr. Abbesinio or Brendan Sherman?
 20 A. It was sometime in August. Oh, I have it
 21 right here. I am sorry. I sent it to Brendan Sherman
 22 August 12th.
 23 Q. It was sent on August 12th?
 24 A. Yes.

Page 19

1 Q. The application?
 2 A. The rental application.
 3 Q. Completely filled out by you?
 4 A. Yes.
 5 Q. Prior to August 15th or August 12th, did you
 6 have any conversations with Dr. Abbesinio?
 7 A. No.
 8 Q. Did you know Dr. Abbesinio?
 9 A. No. I knew about him through Brendan.
 10 Q. What did you know about him?
 11 A. That he was the owner of the building that
 12 held the Laundromat.
 13 Q. And that he would be your landlord?
 14 A. That's correct.
 15 Q. Are you aware of any other contingencies that
 16 were in the Asset Purchase Agreement?
 17 A. Yes.
 18 Q. What were they?
 19 A. That I would have a physical inspection of the
 20 business a reasonable time prior to the settlement.
 21 Q. Did you conduct your physical inspection of
 22 the property?
 23 A. No. And -- should I keep going?
 24 Q. Yes.

Page 20

1 A. The reason why that didn't happen is because I
 2 wasn't sure if the -- the actual assignment of lease
 3 would happen, and, therefore, I didn't want to pay for
 4 someone to go in and inspect the business if I wasn't
 5 going to have the lease assigned over to me. And, so, I
 6 wasn't given any time to do the inspection because I
 7 thought that, obviously, the sale wasn't going to go
 8 through because the assignment of lease didn't happen.
 9 Q. Did you provide any personal information to
 10 the landlord, Dr. Abbesinio? "Personal information"
 11 being personal financial statements or any other
 12 information?
 13 A. No.
 14 Q. Any information supporting the -- your
 15 financial backing for this?
 16 A. No.
 17 Q. You were going to be purchasing this business
 18 in the name of an entity. Do you remember the name of
 19 the entity?
 20 A. Yes.
 21 Q. What was that?
 22 A. Summer State, LLC.
 23 Q. Do you know if that entity was formed prior to
 24 entering into the Asset Purchase Agreement?

Page 21

1 A. It was formed, yes, it was.
 2 Q. Do you remember who formed it?
 3 A. I formed it.
 4 Q. And did you do the necessary filings with the
 5 Secretary of State, do you remember?
 6 A. Yes.
 7 Q. Who else is involved in Summer State, LLC?
 8 A. Nobody.
 9 Q. Just you?
 10 A. Just me.
 11 Q. You are the sole owner, person involved?
 12 A. Yes. That's correct.
 13 Q. When you set up that company or that limited
 14 liability company, where did you set it up? With what
 15 state?
 16 A. Delaware.
 17 Q. Do you remember when that was actually set up?
 18 A. I believe it was August, July or August.
 19 Q. Was that entity set up strictly for the
 20 purchase of this asset?
 21 A. Yes.
 22 Q. The "asset" being the Laundromat?
 23 A. The Laundromat business, yes. I now use that
 24 company for a different business.

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7 (Pages 22 to 25)

Page 22

Page 24

1 Q. Would that be the business, the baby
 2 merchandising business?
 3 A. Yes.
 4 Q. Were there any other issues prior to
 5 settlement, towards the end of August, that were
 6 unresolved between you and Brendan Sherman?
 7 A. Yes. Besides the inspection of the business
 8 that I wasn't able to do because the assignment of lease
 9 didn't occur, I was -- I feel like I was deceived by
 10 Brendan Sherman because I was told by Dr. Abbesinio that
 11 he is also the owner of the business.
 12 Q. Just by way of clarification, when you say
 13 "owner of the business," what do you mean by that?
 14 A. The owner of the Laundromat business.
 15 Q. So, when did that information become relevant
 16 or when did you become aware of that?
 17 A. When I spoke with Dr. Abbesinio.
 18 Q. Do you remember when that was? Was it after
 19 August 15th or was it after --
 20 A. Yes, it was.
 21 Q. Was it before September 1st?
 22 A. Yes, it was.
 23 Q. Do you remember roughly how many days before
 24 September 1st?

1 contract as soon as possible.
 2 Q. Why did you want to get out of the contract?
 3 A. Because I felt like Brendan had totally
 4 deceived me about this whole business, and he represented
 5 himself as the broker, not the owner. He kept saying
 6 "they," and, "They are raising the price," and, "They are
 7 doing this," and, "Well, they can't talk to you because
 8 they are busy." I was absolutely stunned at this whole
 9 business transaction, and I just wanted to get out of it.
 10 And I am still having nightmares about it.
 11 Q. Well, at that point, were you confused as to
 12 Brendan Sherman's role in this whole interaction with you
 13 as the buyer?
 14 A. At that point, I looked up the Ellsher Group,
 15 I looked up JFS Holdings, I did research on my own and
 16 found out that Brendan was the owner of the Ellsher Group
 17 but he was also the owner of the Laundromat.
 18 Q. When did you find that out? Was that before
 19 September 1st?
 20 A. Yes. And thank God that Dr. Abbesinio didn't
 21 assign the lease over because I just wanted no part of
 22 this deal at all.
 23 Q. So, at that point, if, before September 1st,
 24 the tentative date for closing on the Asset Purchase

Page 23

Page 25

1 A. Maybe a week.
 2 Q. Who contacted who?
 3 A. I contacted Dr. Abbesinio because Brendan was
 4 having trouble getting the lease assigned to him from
 5 Dr. Abbesinio. He was giving him a hard time for some
 6 reason.
 7 Q. When you say "he," who do you mean by "he"?
 8 A. Dr. Abbesinio was giving Brendan a hard time
 9 about assigning the lease without him being on the lease
 10 for at least a year.
 11 Q. Okay.
 12 A. And, so, I contacted Dr. Abbesinio about that
 13 issue.
 14 Q. How did you become aware of that issue? Was
 15 it --
 16 A. Brendan had told me that.
 17 Q. Okay.
 18 A. And, so, I contacted Dr. Abbesinio and he had
 19 told me that he is the actual owner of the Laundromat
 20 business, that Brendan is the owner of the business.
 21 Q. And, at that point, you weren't aware that he
 22 had some kind of equity or he was involved in the actual
 23 Laundromat, himself?
 24 A. At that point, I just wanted to get out of the

1 Agreement, if the landlord, Dr. Abbesinio, agreed to
 2 assigning the lease, would you have consummated the
 3 purchase and gone through with it?
 4 A. I wouldn't have had a choice. I had told
 5 Brendan that I no longer wanted it even if he had
 6 assigned the lease to me, but Brendan had told me I
 7 didn't have a choice since I signed the contract.
 8 Q. Have you or your entity been sued by any of
 9 the parties involved in this case?
 10 A. No. I think if anyone should be suing, it
 11 should be me, but I didn't want to go through with any of
 12 this. I didn't want any part of this Laundromat anymore.
 13 Q. Did JFS Holdings, Inc., or Brendan Sherman
 14 discuss the option with you of adding time to the closing
 15 date of September 1st to go beyond September 1st or
 16 resolve any issues that Brendan had with Abbesinio?
 17 A. Yes. He wanted me to add another week or two
 18 to the contract and I said, "No, the contract says
 19 September 1st." I then sent him a letter that said I no
 20 longer want any part of it. And I first sent him a
 21 letter that said I wanted to have an inspector --
 22 Q. When you say "sent him a letter," was that
 23 Brendan Sherman?
 24 A. Yes.

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8 (Pages 26 to 29)

Page 26

1 Q. What was the date of that letter?
 2 A. That was the date of the original closing,
 3 which would have been September 1st.
 4 Q. What was the content of that letter?
 5 A. I said that the Asset Purchase Agreement for
 6 the business located at 509 Basin Road, New Castle,
 7 Delaware, will now be considered void as of September
 8 1st, 2005. I wanted to have an inspector come out to
 9 look at the business before the settlement date, and
 10 since the settlement date is today, there is no way an
 11 inspector can review it ahead of time. Please send me
 12 the down payment of 14,000, less the \$40 fee you paid.
 13 Q. And that was dated when?
 14 A. September 1st, addressed to Brendan.
 15 Q. And that was sent to him by way of fax?
 16 A. I faxed it, yes.
 17 Q. And did Brendan respond to that letter in any
 18 way?
 19 A. Yes. He called me up and told me that he
 20 would send me the 14,000, but the reason that I was
 21 giving here, the inspection, was not good enough, and I
 22 said, "Okay. I will send you another letter," which I
 23 believe I e-mailed it to him, that said, "Because the
 24 assignment of the lease did not occur as of September

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1 or directed to you to write that?
 2 A. Well, since my first letter wasn't good enough
 3 to void the contract and I wanted to get out of it any
 4 way that I can, I said, Well, you know, obviously, you
 5 don't have the lease assignment, so that's the reason
 6 that I am going to give.
 7 Q. When you say, "The first letter wasn't good
 8 enough," what makes you think it wasn't good enough?
 9 A. Mr. Brendan Sherman told me that.
 10 Q. And why did he tell you it wasn't good enough?
 11 A. Because he said I had plenty of time to get
 12 the inspection completed before settlement.
 13 Q. And what did this inspection consist of?
 14 A. To have an expert in that field come out and
 15 look at the shape of the building and the washing
 16 machines, dryers, electric, plumbing.
 17 Q. So, that inspection was never even scheduled?
 18 A. It was scheduled a couple times; however, it
 19 was never completed because I wasn't about to pay for
 20 something if the settlement on this Laundromat
 21 transaction was never going to happen anyway.
 22 Q. As far as the actual purchase of the business,
 23 did you procure liability insurance or any type of
 24 insurance in anticipation of closing on this Laundromat?

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1 1st, the contract is now void."
 2 Q. Was the second letter that you sent, was that
 3 at the direction of Brendan Sherman?
 4 A. Yes.
 5 Q. Did Brendan Sherman script that letter in any
 6 way? Did he provide you with wording for it or send you
 7 a draft copy of what to write?
 8 A. No. He just told me verbally.
 9 Q. And when did you send that letter?
 10 A. It was the same day, September 1st.
 11 Q. And who was that sent to?
 12 A. Brendan Sherman, Ellsher Group.
 13 Q. I am going to provide you a copy of a letter,
 14 which is dated September 2nd, 2005, Brendan Sherman,
 15 Ellsher Group. I am going to provide that for you to
 16 look at.
 17 Does that look familiar?
 18 A. Yes.
 19 Q. Do you recall writing that?
 20 A. Yes.
 21 Q. Was that the content of the letter due to
 22 Brendan Sherman's suggestion?
 23 A. That's correct, yes.
 24 Q. Would you say that letter was scripted by him

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1 A. It was ready to have -- I was getting the
 2 insurance, yes.
 3 Q. Who was that through; do you remember?
 4 A. No. I don't remember. I am sure I have it
 5 somewhere in my many papers, but I don't have it with me.
 6 Q. Did Brendan Sherman, at all, suggest that he
 7 would keep your security deposit when you decided that
 8 you didn't want to proceed with the closing?
 9 A. When I first advised him that I wasn't going
 10 to purchase due to the fact that I wasn't able to get the
 11 inspection, he said that I was in violation of the
 12 contract.
 13 Q. And how much was your -- that deposit?
 14 A. 14,000.
 15 Q. And at that point he said you were in
 16 violation, what were you thinking?
 17 A. I said, "I can't believe this." And I wanted
 18 to get out of it, you know, in any way that I can.
 19 Q. Because you were thinking you would lose the
 20 \$14,000?
 21 A. Yes.
 22 Q. Were you thinking you would lose more than
 23 \$14,000?
 24 A. Yes. I thought I would be sued because of the

Roseann Sestito

9 (Pages 30 to 33)

Page 30

1 contract.
 2 Q. How did the \$14,000 deposit come about? How
 3 was that derived?
 4 A. Ten percent of the purchase price.
 5 Q. Did you have any discussions with Brendan
 6 Sherman after writing the September 2nd, 2005, letter?
 7 A. Yes. He said he would send me the -- my
 8 deposit back.
 9 Q. And did he send that back?
 10 A. Yes, he did.
 11 Q. Did he provide you with any documents
 12 releasing you of the contract or any corresponding
 13 letters saying that you were released of the contract?
 14 A. No. I don't remember any of that.
 15 Q. I'd just like to pause for a second. That
 16 particular letter, the September 2nd letter, if that can
 17 be marked as exhibit, I think for sake of --
 18 A. And I realize I sent it the next day, I guess.
 19 Q. Okay. September 2nd, 2005?
 20 A. Yes. Because I sent one September 1st, and I
 21 guess that wasn't good enough, so September 2nd would
 22 have been -- no, actually, yes, I do have that with me,
 23 September 2nd. "Please see the attached letter for the
 24 termination of the Asset Purchase Agreement."

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1 was marked for identification.)
 2 BY MR. MATLUSKY:
 3 Q. Did Brendan Sherman inform you in any way of
 4 what he was going to be using the September 2nd letter
 5 for other than letting you out of the contract?
 6 A. He advised me that Dr. Abbesino was in
 7 violation of his contract with him. He didn't tell me he
 8 was going to use my letter for anything.
 9 Q. Did you mention, during your discussions after
 10 August 25th, 2005, that he was anticipating filing a
 11 lawsuit against Dr. Abbesino?
 12 A. He did mention that, yes.
 13 Q. When did he mention that?
 14 A. I would say the week before settlement, which
 15 would have been September 2nd.
 16 Q. The settlement was scheduled for September
 17 1st. Would it have been before that?
 18 A. Yes. It would have been about a few days
 19 before September 1st.
 20 Q. So, sometime at the end of August?
 21 A. The end of August, yes.
 22 Q. And what did he tell you he was going to do?
 23 A. Well, he said that he is in violation of the,
 24 you know, his assigning the lease -- his assigning the

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1 Q. Is that the one --
 2 A. That's when I sent the second letter.
 3 Q. So you also have a letter dated --
 4 A. September 2nd.
 5 Q. -- September -- you also have a letter,
 6 though, dated September 1st?
 7 A. That's right.
 8 Q. And --
 9 A. Which would have been the day before closing.
 10 Q. Do you have a copy of the September 1st
 11 letter?
 12 A. Yes, I do.
 13 Q. The September 1st letter, I would like marked
 14 as deposition Exhibit 1.
 15 (Defendant's Deposition Exhibit No. 1
 16 was marked for identification.)
 17 MR. MATLUSKY: And then, also, the
 18 September 2nd, 2005, Defendant's Exhibit 2?
 19 A. Do you think I could get a copy of what I just
 20 gave you back? Is that possible?
 21 Q. Sure.
 22 A. I don't have that anymore. That's my only
 23 copy.
 24 (Defendant's Deposition Exhibit No. 2

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1 lease at the Basin Road Laundromat.
 2 Q. So, just for clarification, Brendan Sherman
 3 said that the landlord was in violation?
 4 A. Yes.
 5 Q. And then, at that point, he informed you that
 6 he was going to sue him or did he not even get into those
 7 kinds of details?
 8 A. He didn't get into those details.
 9 Q. But he made --
 10 A. He made me aware that he was in violation.
 11 Q. When did you find out that there was a
 12 lawsuit?
 13 A. When I got the subpoena.
 14 Q. When was that?
 15 A. That was about two weeks ago, I guess it was.
 16 Q. So, that would be May of --
 17 A. Maybe May 15th.
 18 Q. 2006?
 19 A. 2006.
 20 Q. After September 1st or September 2nd --
 21 MS. DIROCCO: May 5th.
 22 BY MR. MATLUSKY:
 23 Q. Just by way of clarification, May 5th, that's
 24 the first time you became aware of --

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10 (Pages 34 to 37)

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1 A. The actual lawsuit, yes.
 2 Q. Did you have any conversations with Brendan
 3 Sherman after September 2nd, 2005?
 4 A. No.
 5 Q. And, at that point, you just went along your
 6 way and just proceeded to buy another business?
 7 A. As soon as I got my deposit back, I started
 8 looking for a different business.
 9 Q. Were you looking for that business during the
 10 time that you had the Asset Purchase Agreement?
 11 A. Absolutely not, no.
 12 Q. How much did you buy that business for, the
 13 baby merchandising business?
 14 A. \$52,000.
 15 Q. And when did you buy that?
 16 A. I believe it was the end of September.
 17 Q. Of 2005?
 18 A. Of 2005.
 19 Q. So, soon thereafter, you --
 20 A. I started looking for a business right away
 21 that had nothing to do with Laundromats or landlords or
 22 anything like that.
 23 Q. So, if Brendan Sherman came back to you or if
 24 you became aware that this alleged underlying issue

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1 or direction after September 1st as to what you should do
 2 to get out of the contract?
 3 A. Yes. I took his advice to heart because I
 4 feel like he is very smart, and everything he tells me, I
 5 feel like it's right. He told me to try to get out of it
 6 any way possible, and since the inspection didn't occur
 7 and that didn't work, to get out of that contract, and he
 8 misrepresented himself.
 9 Q. As far as "he," you don't mean Dennis?
 10 A. Brendan Sherman, since he -- since he
 11 misrepresented himself --
 12 Q. Dennis was aware about this representations
 13 about who owned what?
 14 A. Yes. And he said that it may not be anything
 15 illegal that he did as far as misrepresenting himself as
 16 the broker, not the owner, but just try to get out of it,
 17 the contract.
 18 Q. Just to be clear, would you have tried to get
 19 out of the contract or tried to declare it null and void
 20 or void out the agreement of sale, the Asset Purchase
 21 Agreement, in any way if, prior to September 1st,
 22 everything was okay with the landlord giving the
 23 assignment, but you still had the knowledge that Brendan
 24 Sherman was somehow involved in the business, would you

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1 involving the lease was resolved between September 2nd
 2 and the end of September, would there be any way that you
 3 would have even considered getting back and purchasing
 4 this Laundromat?
 5 A. Absolutely not. I don't want anything to do
 6 with Brendan Sherman and any of his businesses.
 7 Q. And that goes back to what you had mentioned
 8 earlier?
 9 A. Yes, that he didn't represent himself as the
 10 owner of the business, and I find that to be very
 11 sketchy.
 12 Q. I am going to just recess for one minute.
 13 (Recess taken.)
 14 THE WITNESS: I got the name of my
 15 accountant, Dennis Snyder.
 16 BY MR. MATLUSKY:
 17 Q. Dennis Snyder?
 18 A. Yes.
 19 Q. Do you know how you spell that?
 20 A. S-n-y-d-e-r.
 21 Q. And he is located in Greenville, you had
 22 mentioned, somewhere?
 23 A. Yes.
 24 Q. Speaking of Mr. Snyder, did he have any input

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1 still have tried to get out of buying the business?
 2 A. Yes. I would have contacted an attorney to
 3 try to get out of it. There was no way I was going to
 4 buy that.
 5 Q. Did Brendan Sherman specifically tell you to
 6 put in the September 2nd, 2005, letter, which is labeled
 7 Defendant's Exhibit 2, language in there dealing with the
 8 lease assignment?
 9 A. I copied that paragraph into the letter.
 10 Q. Was that at Brendan Sherman's direction or
 11 input or insight?
 12 A. No. But, like I said, the reason for the
 13 inspection wasn't good enough, and I said, Well, you
 14 didn't get the assignment of the lease, and that was the
 15 other contingency, so that's what I am going to write
 16 down.
 17 Q. So, the first time you wrote a letter to
 18 Brendan Sherman trying to get out was involving the
 19 contingency on September 1st?
 20 A. Yes.
 21 Q. Then you came back September 2nd and wrote
 22 another letter?
 23 A. For the other contingency, yes. If there
 24 would have been a third one, I would have put that one

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11 (Pages 38 to 41)

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1 down, too.

2 Q. If Mr. Sherman said that this September 2nd
3 letter wasn't good enough, at that point, what would you
4 have done?

5 A. I would have contacted an attorney to get out
6 of the contract.

7 Q. And you would have said to the attorney what?

8 A. That he misrepresented himself to me as the
9 broker of the business and I didn't trust him to buy this
10 business from him.

11 Q. So, just to be clear, up until what point did
12 you really not know of Brendan Sherman's true role in the
13 whole picture of you attempting to purchase this
14 Laundromat?

15 A. I would say within five days of the
16 settlement --

17 Q. And the settlement date --

18 A. -- date.

19 Q. And the settlement date, by way of
20 clarification?

21 A. September 1st, 2005.

22 Q. So, sometimes at the end of August?

23 A. So the end of August, I spoke with
24 Dr. Abbesinio, who advised me who Mr. Sherman was.

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Page 41

1 Q. So, at that -- who initiated that particular
2 phone call?

3 A. I did.

4 Q. To -- you called Dr. Abbesinio?

5 A. About the assignment of the lease.

6 Q. And, at that point, you were just, more or
7 less, just questioning status or what was going on?

8 A. Yes. I wanted to know what was taking so
9 long, you know, what's the problem with the assigning the
10 lease over to me? I was going to tell him that I had the
11 money for it and -- and then he dropped the ball and told
12 me that, so --

13 Q. When you say, "He dropped the ball," that was
14 Dr. Abbesinio dropping the fact that he knew Brendan
15 Sherman was involved as the owner of the business of the
16 Laundromat?

17 A. That's right. Is that -- never mind.

18 MS. DIROCCO: Go ahead.

19 (Discussion off the record.)

20 (The reporter read back as requested.)

21 BY MR. MATLUSKY:

22 Q. By way of clarification, Brendan Sherman did
23 inform you that he would file a lawsuit against
24 Dr. Abbesinio prior to the date of -- he would file a

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1 CERTIFICATE

2 STATE OF DELAWARE:

3 NEW CASTLE COUNTY:

4 I, Renee A. Meyers, a Registered Professional
5 Reporter and Notary Public, within and for the County and
6 State aforesaid, do hereby certify that the foregoing
7 deposition of ROSEANN A. SESTITO, was taken before me,
8 pursuant to notice, at the time and place indicated; that
9 said deponent was by me duly sworn to tell the truth, the
10 whole truth, and nothing but the truth; that the
11 testimony of said deponent was correctly recorded in
12 machine shorthand by me and thereafter transcribed under
13 my supervision with computer-aided transcription; that
14 the deposition is a true record of the testimony given by
15 the witness; and that I am neither of counsel nor kin to
16 any party in said action, nor interested in the outcome
17 thereof.

18 WITNESS my hand this 31st day of May A.D. 2006.

19
20 RENEE A. MEYERS
21 REGISTERED PROFESSIONAL REPORTER
22 CERTIFICATION NO. 106-RPR
23 (Expires January 31, 2008)
24

Corbett & Wilcox